

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TERRANCE JON IRBY,

Plaintiff,

V.

HAYNES et al.,

Defendants.

CASE NO. 3:15-CV-05628-RJB-JRC

REPORT AND RECOMMENDATION

NOTED FOR: JUNE 17, 2016

This case has been referred to United States Magistrate J. Richard Creature pursuant to

28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff failed to pay the filing fee of \$400.00

and the undersigned recommends that this matter be dismissed and all pending motions (Dkts.

52,58, 60) be denied as moot.

On March 14, 2016, the undersigned filed a report and recommendation, recommending that plaintiff's *in forma pauperis* ("IFP") status be revoked because he has filed three or more civil actions or appeals that were dismissed as frivolous and for failure to state a claim; and because the complaint did not show that he is in imminent danger of serious injury. Dkt. 65. The Court adopted the report and recommendation and gave plaintiff until May 13, 2016 to pay the filing fee. Dkt. 69. The Court also advised plaintiff that failure to pay the filing fee would result in dismissal of the case. *Id.*

DISCUSSION

2 The court may permit indigent litigants to proceed IFP upon completion of a proper
3 affidavit of indigency. See 28 U.S.C. § 1915(a). However, the court has broad discretion in
4 denying an application to proceed IFP. *Weller v. Dickson*, 314 F.2d 598 (9th Cir.1963), cert.
5 denied, 375 U.S. 845 (1963).

6 The Court denied plaintiff's application to proceed IFP and plaintiff was given an
7 opportunity to pay the filing fee. To date, plaintiff has failed to pay the filing fee. Plaintiff has
8 failed to respond to the Court's order in any way. *See* Dkt. Thus, the undersigned recommends
9 that this case be dismissed.

CONCLUSION

11 Based on the foregoing, the undersigned recommends that this matter be dismissed. The
12 undersigned also recommends that all pending motions (Dkts. 52, 58, 60) be denied as moot.

13 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure
14 (“Fed. R. Civ. P.”), Plaintiff shall have fourteen (14) days from service of this Report and
15 Recommendation to file written objections thereto. See also Fed. R. Civ. P. 6. Failure to file
16 objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474
17 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the Clerk is directed set
18 this matter for consideration on **June 17, 2016** noted in the caption.

Dated this 24th day of May, 2016.


J. Richard Creature
United States Magistrate Judge